

REMARKS/ARGUMENTS

The Office Action mailed September 21, 2006 has been carefully considered.

Reconsideration in view of the following remarks is respectfully requested.

Claims 1-7 have been canceled, without prejudice or disclaimer of the subject matter contained therein.

New claims 8- 13 have been added, which also particularly point out and distinctly claim subject matter regarded as the invention. Support for these claims may be found in the specification, page 1, lines 3-5, page 6, lines 5-31, page 7, lines 1-2, page 9, lines 19-27, page 10, lines 28 – page 13, line 28.

With this amendment it is respectfully submitted the claims satisfy the statutory requirements.

The 35 U.S.C. § 112, Second Paragraph Rejection

Claims 6 and 7 were rejected under 35 U.S.C. § 112, second paragraph, as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter applicant regards as the invention. This objection is respectfully traversed.

New claim 12, which corresponds with canceled claim 6, makes clear that the measuring information is obtained by subtracting the sum of all of the pixels of the first region of interest from the sum of all of the pixels of the second region of interest. The language of this claim is supported in the specification at page 6, line 28 – page 7, line 2.

New claim 13, which corresponds with canceled claim 7, makes clear that “deriving the concentration of fluorescent molecules contained in a solution” is a separate step.

The 35 U.S.C. § 102 Rejection

Claims 1-7 were rejected under 35 U.S.C. § 102(e) as being allegedly anticipated by Ault-Riche et al.¹. This rejection is respectfully traversed.

According to the M.P.E.P., a claim is anticipated under 35 U.S.C. § 102(a), (b) and (e) only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.² “The identical invention must be shown in as complete

¹ U.S. Publication No. 2004/0241748

² Manual of Patent Examining Procedure (MPEP) § 2131. See also *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).

detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 869 F.2d 1226, 1236, 9 U.S.P.Q. 2d 1913, 1920 (Fed. Cir. 1989). *See also*, M.P.E.P. §2131.

New claim 8 includes the following elements:

recording the spatial structure of the image;

examining the spatial structure of the image and distribution of light energy in the image with respect to one or more references, and defining one or more regions of interest so that measuring information can be extracted;

extracting the measuring information;

recording the measuring information; and

calculating the assay with respect to the measuring information.

Ault-Riche does not disclose or suggest the foregoing elements.

As to dependent claims 9-13, the argument set forth above is equally applicable here.

The base claims being allowable, the dependent claims must also be allowable.

In view of the foregoing, it is respectfully asserted that the claims are now in condition for allowance.

Conclusion

It is believed that this Amendment places the above-identified patent application into condition for allowance. Early favorable consideration of this Amendment is earnestly solicited.

If, in the opinion of the Examiner, an interview would expedite the prosecution of this application, the Examiner is invited to call the undersigned attorney at the number indicated below.

Applicant respectfully requests that a timely Notice of Allowance be issued in this case. Please charge any additional required fee or credit any overpayment not otherwise paid or credited to our deposit account No. 50-1698.

Respectfully submitted,

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Dated: 12/21/06



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